Supersizing Small Town America: Using Regionalism to Right-Size Big Box Retail

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I. INTRODUCTION

The rally to save our rural countryside in the 1980s was spearheaded largely from a coordinated effort of the environmental conservation and historic preservation movements, focusing on techniques to protect and preserve open space and significant environmental and natural land features.[1] During the same era, however, the economic phenomenon of big box retail[2] was developing across the country posing a new threat in the 21st Century to small town America.[3] Armed with a corporate strategy that includes the siting of large-scale stores in small towns,[4] Wal-Mart (and other large-scale retailers such as K-Mart, Lowes, Home Depot, IKEA, Sam's Warehouse Club, COSTCO, Barnes & Noble, and Target) has literally placed its mark on the rural countryside; at times standing out as the noticeable development along empty stretches of land, often contrasted

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1. *See generally* Samuel N. STOKES & A. ELIZABETH WATSON, SAVING AMERICA'S COUNTRYSIDE: A GUIDE TO RURAL CONSERVATION (1989).

2. Big box retail has been defined in some regions as stand-alone stores of 100,000 square-feet or more. Laura Altenhof, *Coping with Big Box Retailers* (Jan. 1999), *at* http://www.planning.org/hottopics/bigbox.htm. In other regions it has been defined as "large industrial-style buildings with vast floorplates or footprints, up to 200,000 square-feet. Although single-story, they often have a three-story mass that stands more than thirty feet tall, allowing the vertical stacking of merchandise. Big box buildings in the range of 120,000 to 140,000 square-feet occupy the equivalent of two to three city blocks or 2 ½ to 3 ½ football fields." Office of State Planning, *Big Box Retail*, OSPlanning Memo 1 (Dec. 1995), *available at* www.nj.gov/dca/osg/docs/bigboxretail120195.pdf. Another study identifies the following characteristics of big box retail: typically occupies between 90,000 and 200,000 square-feet; derives profits from high sales volume rather than mark-up; large, windowless, rectangular single-story buildings; standardized facades; relies on consumers with cars; has acres of parking; presents a no-frills site development that eschews any community or pedestrian amenities; seems to be everywhere but unique to no place. Texas Perspectives, Inc. & Gateway Planning Group, *Big Box Retail and Austin: Prepared for the City of Austin* (June 23, 2004), *available at* www.ci.austin.tx.us/redevelopment/downloads/Big%20Box.Austin.final.pdf.

3. *See generally* PATRICK HAYDEN ET AL., WAL-MART: STAYING ON TOP OF THE FORTUNE 500: A CASE STUDY ON WAL-MART STORES, INC. (2002), (the case study is an examination of how Wal-Mart's Corporate Strategy affects its public affairs and government relations strategy, and it was produced for the Corporate Strategy and Public Affairs Lecture, The Graduate School of Political Management, George Washington University), *available at* http://mike-pereira.com/subpage/docs/walmartcs.htm.

4. *Id*. at 5.

against beautiful mountains and country landscapes.[5] This development presents a new challenge for rural preservationists: balancing needed economic development and consumer buying preferences with goals of preserving small town character[6] and a sense of community. This development has led the National Trust for Historic Preservation in 2004 to place the State of Vermont on its list of the 11 most endangered historic places.[7]

There have been hundreds of Wal-Mart related litigated cases focusing on land use planning and zoning issues surrounding the siting of these mega-stores.[8] This article explores how regionalism techniques can be used

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5. A combination of space demands (both in terms of retail floor space and sufficient parking for cars) and traffic patterns/accessibility to major thoroughfares required by the big box retailers, lead them to seek locations outside of the traditional retail corridor in communities. Arthur W. Hooper, Jr. & Howard Goldman, *Where the 'Big Boxes' Belong: City Planning Commission Have Devised Various Solutions to the Problem of Zoning Big Retailers*, 18 NAT'L L.J. 29 (1996). The development patterns of big box retail have been described as "reproduced almost exactly in every location and are thus everywhere and nowhere at once: They are like pieces of 'ageographical cities.'" MICHELE BYERS, SUBURBAN SPRAWL: CULTURE, THEORY AND POLITICS, WAITING AT THE GATE: THE NEW POSTMODERN PROMISED LAND (Matthew J. Lindstrom & Hugh Bartling eds., 2003).

6. Preservation of small town character has to do, in part, with how the residents feel who reside in a community. When it comes to big box retail, the debate often focuses on corporate brand development versus small locally owned businesses. *See* ANONYMOUS, MULTINATIONAL MONITOR, EVERYBODY COMPLAINS ABOUT SUBURBAN SPRAWL, OR AT LEAST ITS MOST OBVIOUS MANIFESTATION, WORSENING TRAFFIC, 5, (Oct. 1, 2003) (explaining that corporate-influenced policies support factory farms, making small family farms more likely to be sold to developers), *available at* 2003 WLNR 10012538. However, scale of development and aesthetic considerations are also of critical importance. Scott Wolf, executive director of Grow Smart Rhode Island, concerned about the growing number of Wal-Marts in Rhode Island, remarked that "'Our calling card is our charm, our historic charm, our natural beauty . . . . That's a critical part of Rhode Island. If we're not vigilant about preserving that, we lose it.'" Ian Donnis, *Is Wal-Mart Inevitable?*, THE PROVIDENCE PHOENIX, May 7, 2004, *available at* www.providencephoenix.com/features/top/multi/documents/03809945.asp.

7. National Trust for Historic Preservation, *America's 11 Most Endangered Historic Places* (2004), *available at* http://www.nationaltrust.org/11most/2004/vermont.html. According to the National Trust, "During the 1990s Wal-Mart located three of its four Vermont stores in existing buildings and kept them relatively modest in size. Now, however, the world's largest company is planning to saturate the state—which has only 600,000 residents—with seven new mammoth mega-stores, each with a minimum of 150,000 square-feet." *Id*. The National Trust continues, "The likely result: degradation of the Green Mountain State's unique sense of place, economic disinvestment in historic downtowns, loss of locally-owned businesses, and an erosion of the sense of community that seems an inevitable by-product of big box sprawl." *Id*. The Vermont Natural Resources Council predicts that if Wal-Mart gets to site the seven proposed new stores in the State, "[n]ot only are the postcard views over, but the heart of Vermonts [sic] economy is put in jeopardy as sprawl clutters the views that tourism depends on, eliminates local, livable-wage jobs, and poses a very serious threat to our environment." Vermont Natural Resources Council, *7 More Walmarts*? *7 new big box Wal-Marts are proposed in Vermont*, *at* http://www.vnrc.org/article/view/5407/1/649 (last visited Apr. 24, 2005).

8. *See* Dwight H. Merriam, *Nonplussed about Nonpareil: Wal-Mart as a Land Use Phenomenon*, 27 No. 11 ZONING & PLAN. L. REP. 1 (2004). Merriam highlights roughly fifty cases identified as the "more important" cases where developers challenged town actions that inhibited Wal-Mart from locating on property they owned; challenges to the sufficiency of the legal description of

to guide big box development into regional centers to preserve small town quality of life and maintain local economic boosts[9] that big box stores offer communities.

A. Growth of the Big Box Retail Movement

In 1993, Wal-Mart became the largest retail chain in the world, the 10th most profitable company in the United States, and 4th largest company in terms of net worth.[10] Continued expansion was facilitated by the warm

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property used in a zoning referendum; where opponents of Wal-Mart development challenged government actions that would facilitate Wal-Mart development; challenges on environmental grounds; and situations where Wal-Mart intervened in proceedings to protect/promote their interests; as well as cases where citizen groups challenged federal actions related to Wal-Mart development. *Id*; *see generally* Sprawl-Busters, *at* www.sprawl-busters.com (last visited Apr. 24, 2005). Perhaps one contributing reason for the litigation has been Wal-Mart's failure to communicate and work with the communities within which it desires to do business. As explained by Robert S. McAdam, Wal-Mart's vice-president for state and local government relations, "I think there was a point in the company's history when we were less sensitive to local needs, but we have gotten better . . . ." Robert McNatt, *Who Says Wal-Mart is Bad for Cities? Underserved Neighborhoods Welcome its jobs, low prices and tax revenue*, BUS. WK., May 10, 2004, at 77. According to Professor Steven Ashby of the University of Indiana who teaches a course called "Wal-Mart," "[w]ith 1.5 million employees, it is not only the world's largest corporation, but also the world's most sued corporation." Lee Ann Sandweiss, 'Big *Box' Retail 101* (2004), *at* http://www.homepages.indiana.edu/040904/text/workweekBigBox.shtml.

9. The issue of whether Wal-Mart truly brings economic development to a community is beyond the scope of this article; however, opponents of Wal-Mart strenuously advocate that "[b]ig box development is not a form of economic development, but a form of economic displacement." ANONYMOUS, MULTINATIONAL MONITOR, TAKING ON SPRAWL-MART SPRAWL-BUSTING, COMMUNITY BY COMMUNITY 30, Jan. 1, 2004, *available at* 2004 WLNR 11346221 (quoting Al Norman). Al Norman is the founder of Sprawl-Busters and "the guru of the anti-Wal-Mart movement." *Id*. According to one economics professor, "[t]he gain in sales revenue from a new big box is offset by the loss of sales elsewhere, either in the same community or in nearby towns." Pete Letheby, THE INDEPENDENT.COM, PRESENCE OF BIG BOX RETAILERS HAS HIDDEN COSTS, Feb. 13, 2004, *available at* www.theindependent.com/stories/021204/opi_letheby13.shtml (citing Iowa State Professor Kenneth Stone). A recent fiscal study prepared for the Mid-Ohio Regional Planning Commission "conclude[ed] that retail development costs cities more in public services than it generates in revenue." The Hometown Advantage, *New Report Finds Retail Development Costs Ohio Taxpayers*, (Oct. 1, 2004), *at* http://www.newrules.org/retail/news_slug.php?slugid=265. But see Sam Staley, *Big box Retailers Have Important Regional Benefits*, DAYTON DAILY NEWS (July 9, 1999), *available at* www.rppi.org/opeds/dd n.html. Staley asserts that, "Rather than focusing on the relatively small benefits of insulating antiquated businesses from competition, local citizens and public officials should recognize the communitywide benefits that come from new business growth. In most cases, the growth of retail businesses, especially larger chains, enhances the broader community's quality of life." *Id*. But Staley fails to substantiate his point of view with studies or fact. A study by Edward B. Shills found that retail sales in towns surrounding towns with a Wal-Mart dropped 2% in the first year of the Wal-Mart opening and 34% over a subsequent 10 year period. Veronica Cassidy, *Big Box Retail Hurts All Parties*, 98 THE MAC WKLY, at 7 (Nov. 5, 2004), *available at* www.macalester.edu/weekly/110504/opinion01.html.

10. *See* DAVID PORTER & CHESTER L. MIRSKY, MEGAMALL ON THE HUDSON: PLANNING, WAL-MART, AND GRASSROOTS RESISTANCE 51-52 (2003).

welcomes from many local chambers of commerce.[11] Wal-Mart's competitive strategy is to dominate every sector where it does business, and expand by beating out competitors.[12] While some residents believed Wal-Mart benefited local economies by providing good products at low prices and new jobs,[13] these supporters slowly discovered that this new business paradigm stifled competition from local mom and pop stores.[14]

While some officials were laying out the red carpet for Wal-Mart,[15] others were trying to set up road blocks. As the company's success continued to grow over the years, critics argued that it was at the expense of small businesses and local economies, and "[t]hose put out of business by the giant retailer are among its most ferocious critics."[16] They argue that Wal-Mart, and "big box" stores in general, "cannibalize" existing, in-town retail sales and jobs; essentially geographically shifting them from one location to another, and that this geographic shift promotes extreme levels of auto dependency for those who live in the region, creating a downward

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11. Hayden, *supra* note 3, at 5.

12. Hayden, *supra* note 3, at 12. Wal-Mart competes by "build[ing] more stores, mak[ing] existing stores bigger, and [by expanding] into other [areas] of retail," and they strive to make money through domination of the market place, thus inevitably putting others out of business. *Id*. at 15.

13. *Id*.

14. Often, supporters of big box retail are the same people and the same communities that desire to slow or halt residential development due to increasing school taxes and increasing demands on the public school infrastructure, preferring to attract larger-scale commercial development in the hopes of meeting these concerns. *See* Paula Stephens, *Area Review: Squeezing into New England* (July 1, 2001), *at* http://retailtrafficmag.com/markets/northeast/retail_area_review_squeezing (discussing New England towns' desire for commercial, rather than residential development, to maximize their tax revenue). A study by Tischler & Associates about commercial development in Barnstable, Massachusetts found that big box retail (as well as shopping centers and fast-food restaurants) cost taxpayers more than they produce due to increased municipal costs for road maintenance and greater demands on public safety resources. Jennifer Rockne & Jeff Milchen, *Local Ownership Pays Off for Communities* (May, 2003), *available at* http://reclaimdemocracy.org/independent_business/local_ownership_pays.hmtl. For example, the city of Pineville, North Carolina, had to raise taxes to subsidize the added public safety costs associated with big box retail, noting that commercial properties accounted for 96% of all police calls in the city. *Id*. Similarly, in East Lampeter, Pennsylvania, a district justice added two days to the monthly court calendar just to deal with crimes generated at a Wal-Mart, which accounted for about 25% of the town's non-traffic citations, criminal misdemeanors, and felony complaints. *Id*.

15. *See* JENNIFER D. DUELL, COMMERCIAL PROPERTY NEWS, WITH OPEN ARMS: MUNICIPALITIES EMBRACE BIG BOX RETAIL DEVELOPMENT FOR ECONOMIC BENEFITS (Sept. 1, 2004), *available at* 2004 WLNR 5834928.

16. Hayden, *supra* note 3, at 17. *See also* Texas Perspectives, Inc. & Gateway Planning Group, *supra* note 2. The authors point to a study by Iowa State University Economist Kenneth Stone whose twelve year study of Wal-Mart stores in small towns and rural communities in the mid-west concluded that local businesses that sell something different than what is in Wal-Mart stores suffer no economic harm by the presence of the big box retailer, and in fact they may experience an increase in sales due to increases in traffic going to the larger store; yet local businesses that sold the same merchandise as the big box retailer would lose sales unless they repositioned themselves. *Id*. at 3.

spiral toward sprawl and blight.[17] In addition, critics assert that all sources of municipal tax revenues from new big box retailers fail to truly yield a net gain for the locality. This phenomenon results from the lost tax revenues from smaller vanishing businesses and, conversely, the enhanced levels of public funding needed to support local highways, police, fire, and other small-town services that are necessitated by the new big box retail.[18]

Nationally, however, big box construction continues to grow. From December 2002 to February 2004, the general merchandise sector (including Wal-Marts, Targets, and K-Marts) increased almost twenty-nine percent.[19] Not all planners view big box development as the enemy; some communities have effectively used big box retailers to accomplish re-development goals, and others have found creative re-use for vacant big box sites.[20]

II. BIG BOX RETAIL HAS REGIONAL IMPACTS

Big box retail is intended to serve more than just the residents of the particular host jurisdiction. By their size, and through national advertising efforts, these giant retailers are siting area-wide or regional shopping destinations. It should be no surprise then that the negative impacts of big box development are often felt on a regional level.[21] When a superstore

17. Dom Nozzi, *Big Box Retail: What Can a Community Do About Them?* (2004), *at* http://user.gru.net/domz/bigbox.htm. Professor Patrick A. Randolph, Jr. explains, "[t]he big box business model is not based on sharing customers with those drawn by neighboring retailers, but rather on drawing customers through the store's own reputation and advertising. Big box stores seek to provide direct and convenient access to their customers, and usually they are not interested in walking their customers past a mall full of lesser retailers using the big box as an anchor." Patrick A. Randolph, Jr., *Does a Shopping Center Landlord Have an Implied Operating Duty?*, 17 PROB. & PROP. 26, 28 (2003).

18. *See* Will Lindner, *The Advance of the Big Box and How Vermont Can Get What it Wants*, VT. ENVTL. REP. 13 (Winter 2004), *available at* http://www.vermontwalmartwatch.org/ver_winter.pdf. *See also* Jennifer Barrios, *Battling the Box: IKEA and the Future of East Bay Retail* (July 18, 2001), *available at* http://www.galvins.com/reviews/review10-4.html (discussing the siting of an IKEA store in the California East Bay area and explaining that potential tax dollars from the City of Berkeley are lost when big box retail sites in neighboring jurisdictions). "One percent of sales tax goes into the city coffers to fix the potholes in front of your house. If you aren't shopping Berkeley, then you can't complain about your potholes." *Id*.

19. Matthew Phillips, *Big box Store Building Bulks Up Revenue at Construction Firms*, THE BUS. REV., Feb. 20, 2004, *available at* http://albany.bizjournals.com/albany/stories/2004/02/23/story5.html.

20. Adam Clayton et al., *California Responses to Supercenter Development, A Survey of Ordinances, Cases and Elections*, PUB. L. RES. INST. REP., at 55-56 (Spring 2004).

21. Deborah Curran, CHALLENGING THE SPRAWL OF BIG BOX RETAIL: THE SMART GROWTH APPROACH TO "ZONE IT AND THEY WILL COME" DEVELOPMENT §4.6 (2002).

zeros in on a specific location and decides to build, other local jurisdictions within the same region are inevitably affected (whether or not they participate in the decision-making process).[22] The most commonly cited regional impacts associated with big box stores include changes in transportation patterns, increased noise and air pollution, and alterations of community aesthetics.[23] Other impacts include adverse environmental effects on aquifers and other water bodies that may become contaminated by oil run-off from surface parking lots or improperly handled chemicals at stores that sell garden supplies.[24] Furthermore, while communities that host big box stores generally derive some economic benefit from them (usually, in the form of increased sales tax revenue),[25] smaller towns in the immediate vicinity usually see a marked decrease in sales tax revenue and the number of operating retailers.[26] For example, one recent study found that sales in surrounding communities dropped by two percent after the first year Wal-Mart came to town, and continued dropping at a rate of over thirty-four percent over ten years.[27] Another study commissioned by the Orange County (California) Business Council on the impact of big box grocers found negative regional economic impacts based upon wage gaps (decreases in wages paid by big box retailers to employees), and negative regional impacts in the real estate markets due to corporate restructuring and consolidation of big box retailers that leave large vacant retail space,

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22. *Id*.

23. *Id*.

24. Texas Perspectives, Inc. & Gateway Planning Group, *supra* note 2.

25. Memorandum from Steve Westbay to the City of Gunnison, Colorado, Planning and Zoning Commission, at 1 (Oct. 4, 2004), *available at* http://www.ci.gunnison.co.us/big_box/economic.impacts/pz.memo.10.04.04.lit.rev.pdf [hereinafter Westbay Memorandum]. An attempt to block a Wal-Mart in Los Angeles prompted one council member to suggest that such action would lead to Wal-Mart opening superstores in neighboring communities, "depriving the region's largest city of tens of millions of dollars in annual sales tax." Alison Shackelford & David Zahniser, *City Council Sends Notice to Big Box Stores*, COPELY NEWS SERVICE, Aug. 10, 2004, *available at* http://www.laane.org/pressroom/stories/walmart/040810copely.html.

26. For example, a recent paper from the Canadian Institute of Urban Studies found that in Winnipeg, Manitoba:

> The fallout from the wave of big box store expansion seems more conspicuous at lower levels of the retail hierarchy. Vacancy rates in smaller open-air strip malls were found to be in the range of fifteen to twenty-five percent or five to eight times higher than what is the case in the larger enclosed malls. Hence, as the average size of retail units increase and the number of smaller "mom and pop," non-chain retail businesses decrease, landlords of these smaller malls are finding it increasingly difficult to find tenants to fill the type of units they have for lease.

Brian J. Lorch, Big Boxes, Power Centres and the Evolving Retail Landscape of Winnipeg: A Geographical Perspective 28-29 (2004) (unpublished Research and Working Paper #43, University of Winnipeg) (2004), *available at* http://ius.uwinnipeg.ca/pdf/bigboxes_lorch.pdf. *See also* Westbay Memorandum, *supra* note 25.

27. Cassidy, *supra* note 4.

which is often difficult to lease.[28] Studies such as these have led many to question the wisdom of current municipal development practices and to begin to look toward advancing a regional approach to big box development.

A. Regional Impacts Demand Regional Strategies to Effectively Plan and Zone for Big Box Development

While local governments may employ a variety of planning and zoning techniques to address concerns presented by the prospect of big box retail development,[29] these techniques fail to take into account and effectively manage in a coordinated fashion the interconnectivity and impacts of such development on all neighboring municipalities. Examples of local planning and zoning regulations designed to control big box retail include: limitations on the size of the footprint of buildings and restrictions on the amount of space therein that can be used for the sale and display of certain products;[30] site layout and development standards (including tract and lot

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28. Marlon Boarnet & Randall Crane, *The Impact of Big Box Grocers on Southern California: Jobs, Wages and Municipal Finances*, at 57, 64 (1999), *available at* http://www.coalitiontlc.org/big_box_study.pdf. The report offered a set of policy issues and findings including: (1) "Supercenters, especially Wal-Mart supercenters, are often conversions of existing discount retail stores, and local officials should be aware of that possibility. In 1999, Wal-Mart estimated that 72% of all new supercenters would be built by converting existing Wal-Mart discount centers . . . (2) [Since] the grocery industry in Southern California pays substantially higher wages, and better benefits, than Wal-Mart . . . Accounting for the multiplier effect as those wage and benefit cuts ripple through the economy, the total economic impact on the southern California economy could approach $2.8 billion per year. (3) The fiscal benefits of supercenters . . . are often complex" as they combine taxable and non-taxable merchandise/products and because the discount retail outlet will potentially shift sales from existing local retail to their outlet with an uncertain increase in net sales. *Id*. at 94.

29. *See, e.g.*, Daniel J. Curtin, Jr., *Regulating Big Box Stores: The Proper Use of the City or County's Police Power and its Comprehensive Plan*, 6 VT. J. ENVTL. L. 31 (2005). Municipalities may, through their police powers, use their comprehensive plans and accompanying zoning ordinances to address among other issues, traffic impacts and community character. *Id*. *See also* Gordon Harris, *Less is More—The Evolution of Big Box Retailing*, 18 ONTARIO PLAN. J. 2 (2003), *available at* http://www.harrisconsults.com/links/articles/182%20Harris.pdf ("Planners also have an opportunity to help retailers find suitable suburban sites that not only have potential for a re-positioned retail offering, but which minimize burdens on the transportation system and which maximize the overall livability of the community.").

30. For example, an October 1999 amendment to zoning ordinance for the City of Las Vegas states:

> [I]f any business exceeds 110,000 square-feet of retail space then no more than two (2) percent may be used for the sale or display of food. For these purposes "business" shall be defined not only as a single store, but also two or more stores within the same shopping center which share check stands, management, controlling ownership interest or warehouse or distribution facilities. No business over 110,000 square-feet devoting more than two percent (2%) to food at the time this restriction was enacted shall be required to reduce the amount of space

size, coverage and site disturbance, and setbacks and buffers), parking standards;[31] and aesthetic design standards to ensure that the buildings fit community character.[32] In addition to typical land use and zoning regulations, the requirement of impact assessments (e.g., studies on economic impacts, traffic impacts, and fiscal impacts) can be a valuable community planning tool.[33]

Because economic activity (and its environmental and social impacts) does not recognize jurisdictional boundaries, regional planning is a better way to accurately achieve the economic and environmental health of a region, while also providing for the needs of individual localities.[34] By working together, municipalities can articulate and achieve common goals that include effective strategies for, among other things, protecting common resources, coordinating public infrastructure, sharing tax-base, and planning for commerce and industry.[35]

1. Voluntary Inter-Jurisdictional Coordination and Agreements

The use of voluntary inter-jurisdictional coordination efforts and cooperative agreements is an example of an effective regional technique to plan for big box retail.[36] One of the primary reasons for demanding a

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> devoted to food, but it may not expand the square-footage so devoted. (Clark County Zoning Ordinance to amend Title 29, Chapter 29.02, Section 29.02.030)

Holland & Knight, Property Writers, *Big Box on the Run* (2000), *available at* www.hklaw.com/Publications/Newsletters.asp?ID=57&Article=171.

31. *See* Office of State Planning, *supra* note 2, at 6. The magnitude of parking required for siting a big box can be enormous. For example, a 250,000 square-foot supercenter in one California municipality would need at least a sixteen-acre parking lot to meet the minimal requirement of five parking spaces per thousand square-feet of store space. In at least one Georgia community, Wal-Mart worked with the municipality to address this concern by designing an underground parking lot. *See* Clayton, *supra* note 20, at 28–29.

32. Chris Duerksen & Robert Blanchard, *Belling the Box: Planning for Large-Scale Retail Stores*, 1998 NAT'L PLAN. CONF., *at* http://www.asu.edu/caed/proceedings98/Duerk/duerk.html. Duerksen and Blanchard highlight the experiences in Fort Collins, Colorado where they developed design guidelines for superstores that addressed, among other things, architectural features, building color and materials, building facades and other factors that relate to the surrounding community and streets, sidewalks and other pedestrian flow related standards and design of parking lots. *Id*.

33. *See* Office of State Planning, *supra* note 2.

34. Kevin Wack, *In Some Towns, 'Big Box' Can Mean Better*, PORTLAND PRESS HERALD, Feb. 2, 2004, at 1A (explaining big box critics' position that "large-scale retail projects should be subject to review by regional planning boards"), *available at* 2004 WLNR 17013238. *See also* Ashley S. Miller, *Book Review: Developing Regionalism: A Review of the Regional City: Planning for the End of Sprawl by Peter Calthorpe and William Fuller*, 11 N.Y.U. ENVTL. L.J. 842, 851 (2003) (advocating regional zoning).

35. BENNET HEART ET AL., COMMUNITY RULES: NEW ENGLAND GUIDE TO SMART GROWTH STRATEGIES 18 (2002).

36. *See* THEODIS L. PERRY, JR., MD. DEP'T OF PLANNING, MANAGING MARYLAND'S GROWTH:

coordinated regional approach is that individual local governments often lack control over the phasing, timing, siting, and funding of the public facilities or development outside of their municipal boundaries; all of which are critical in dealing with infrastructure to service big box impacts.[37] Yet the impacts of these development decisions know no municipal boundaries. One method used to deal with this is found in Maryland, where, encouraged in large part by the state's Growth Management programs, local governments are offered fiscal incentives to enter into inter-jurisdictional agreements for various types of public infrastructure, including roads, sewer, and water.[38] By working cooperatively, local governments can assume a shared responsibility for how the region develops, ensuring adequate public infrastructure to meet all regional project impacts, not just those in the jurisdiction with the primary approval responsibility. There is precedent in New England for the use of voluntary cooperative agreements in areas other than big box retail, providing a template, for example, of how an intermunicipal planning district can be voluntarily established to assist with local and regional issues.[39]

Most states have constitutional or statutory provisions that enable two or more local governments to work together to achieve common goals.[40] In addition, states such as New York provide broad statutory authority to local governments, specifically to encourage these governments to work together to accomplish intergovernmental planning and zoning.[41] Voluntary compact planning is another technique that has been used to develop a

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MODELS AND GUIDELINES, BIG BOX RETAIL DEVELOPMENT 62 (2001), *available at* http://www.mdp.state.md.us/mgs/bigbox/bigbox_v3.pdf.

37. *Id*. at 60.

38. *See id*. at 59 (citing to Annotated Code of Maryland, Finance and Procurement Section 5-707(a)(1), which provides: "Inter-jurisdictional Coordination Subcommittee 'shall promote planning and coordination and interjurisdictional cooperation among all jurisdictions consistent with the State's economic growth, resource protection and planning policy.'"). The report also recommends that, "[t]he State's Inter-Jurisdictional Coordination Subcommittee can be used as a vehicle to assist local jurisdictions requesting assistance for project evaluation or inter-jurisdictional agreement regarding big box proposals." *Id*. at 63.

39. HEART ET AL., *supra* note 35, at 18 (discussing how ski resort areas of Fayston, Waitsfield, and Warren (Vermont) created an intermunicipal planning district to hire staff to help address common issues).

40. *See* GEORGE CARPINELLO & PATRICIA SALKIN, LEGAL PROCESSES FOR FACILITATING CONSOLIDATION AND COOPERATION AMONG LOCAL GOVERNMENTS: MODELS FROM OTHER STATES (Government Law Center of Albany Law School 1990).

41. N.Y. GEN. CITY LAW § 20-g (McKinney 2003); N.Y. GEN. MUN. LAW § 119-u (McKinney 1999); N.Y. TOWN LAW § 284 (McKinney 2004); N.Y. VILLAGE LAW § 7-741 (McKinney 1996). These sections expressly provide authority for cities, towns, and villages to enter into voluntary agreements to accomplish joint comprehensive land use planning and to establish intermunicipal overlay districts. *See* GOVERNMENT LAW CENTER OF ALBANY LAW SCHOOL, INTERMUNICIPAL COOPERATION IN LAND USE PLANNING (1994).

shared county-wide plan whereby participating municipalities then agree to adjust their local plans and land use controls to aid in the implementation of the county plan.[42] While it is good public policy to enable inter-municipal cooperation to enact planning and land use control tools, because it is voluntary, this option requires the political consensus of all needed or participating local governments. For those regions that have conducted their studies and developed strategies for big box developments in advance, these options are most useful. For regions that have not been proactive, but are reactive to imminent big box applications, these options may not be practically feasible.

2. Tax-Base Sharing and Intergovernmental Revenue Sharing Agreements

There is no doubt that big box retail has many ramifications that cross municipal boundaries. One key dilemma is balancing the opportunity for additional tax revenue with the possibility of "over-storing" the region.[43] When one municipality affects a retail cap[44] or other land use control to curb big box development, avoiding negative secondary impacts such as traffic, pollution, and sprawl, there exists a possibility that the store will locate in a neighboring municipality. This provides the second town with the tax benefits and leaves the secondary effects to the town that specifically sought to avoid them.[45] In other circumstances, neighboring localities competing for commercial tax base might attempt to separately attract the same big box retail to their jurisdiction, offering more favorable terms, public subsidies, and relaxation of land-use standards to the detriment of all municipalities in the region.[46] By using tax-base sharing, all participating municipalities in the region agree to share tax proceeds from new development, thereby eliminating inter-jurisdictional competition

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42. *See generally* Patricia E. Salkin & Paul Bray, *Compact Planning Offers a Fresh Approach for Regional Planning and Smart Growth: A New York Model*, 30 REAL EST. L.J. 121 (2001) (for more information on compact planning).

43. Altenhof, *supra* note 2. The author suggests the use of regional impact assessments and participation in the development of regional commercial policies and plans (and the consistency of such plans between regional and local agencies).

44. A retail cap limits the size of stores in a commercial district by placing limits on the square-footage a single store may occupy. *See* Community & Economic Development, Retail Caps, *available at* www.cdtoolbox.org/mainstreet_downtown_revitalization/000217.html (listing examples of local ordinances across the country that impose retail caps).

45. Constance E. Beaumont & Leslie Tucker, *Big Box Sprawl (And How to Control It)*, 43 MUNICIPAL LAWYER 30 (March/April 2002), *available at* http://www.nationaltrust.org/issues/smartgrowth/big_box_sprawl.pdf.

46. STUART MECK, GROWING SMART LEGISLATIVE GUIDEBOOK 14-16 (American Planning Association 2002).

and encouraging cooperation on regional economic goals.[47]

Tax-base sharing among municipalities has also proven to be an effective way to manage the inequality created when local communities compete with one another for big box revenue.[48] Local governments in a metropolitan area may choose to form contracts with one another in order to offset the regional burdens created by local land use decisions, and to ensure that everyone shares in the benefits derived from new development projects.[49] Such intergovernmental contracts can be problematic, however, as it has been suggested that the sovereign power doctrine might prevent their enforcement in the event of a controversy.[50] States can overcome this obstacle by enacting legislation that facilitates efficient and enforceable tax-base sharing agreements among municipalities.

For example, Maine had enacted legislation that authorizes the creation of tax sharing districts among local communities.[51] The law stipulates that "[a]ny [two] or more municipalities may, by vote of their legislative bodies, enter into an agreement to share all or a part of the commercial, industrial, or residential assessed valuation located within their respective communities."[52] The law states that municipalities entering into such agreements are free to adopt their own allocation formulas, and to make agreements with other, non-adjacent municipalities.[53]

Similarly, Minnesota enacted a landmark statute in 1971 that requires municipalities in the Minneapolis-St. Paul region to share tax-base revenue.[54] The legislation was enacted "to establish incentives for all parts

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47. The Hometown Advantage: Reviving Locally Owned Businesses, *Regional Tax-Base Sharing* (2005), *available at* www.newrules.org/retail/taxbasesharing.html.

48. Shelley Ross Saxer, Local *Autonomy or Regionalism?: Sharing the Benefits and Burdens of Suburban Commercial Development*, 30 IND. L. REV. 659, 676 (1997).

49. *Id*.

50. *Id*.

51. *See* Kirk G. Siegel, *Weighing the Costs and Benefits of Property Tax Exemption: Nonprofit Organization Land Conservation*, 49 ME. L. REV. 399 (1997).

52. ME. REV. STAT. ANN. tit. 30-A, § 5752 (West 1996) provides in part that "[a]ny 2 or more municipalities may, by a vote of their legislative bodies, enter into an agreement to share all or a specific part of the commercial, industrial or residential assessed valuation located within their respective communities. Municipalities that vote to enter into an agreement pursuant to this section are not required to have borders that are contiguous." *Id*.

53. *Id*.

54. MINN. STAT. ANN. §§ 473F.01-473F.13 (West 2001). It was enacted, in part, "(1) to provide a way for local governments to share in the resources generated by the growth of the area, without removing any resources which local governments already have; (2) to increase the likelihood of orderly urban development by reducing the impact of fiscal considerations on the location of business and residential growth and of highways, transit facilities and airports; (3) to establish incentives for all parts of the area to work for the growth of the area as a whole; (4) to provide a way whereby the area's resources can be made available within and through the existing system of local governments and local decision making . . . ." *Id*. § 473F.01.

of the area to work for the growth of the area as a whole."[55] The law requires local governments who are experiencing "above average industrial and commercial property tax growth . . . to share a percentage of the increment with other localities . . . ."[56] The size of these inter-local payments varies depending on the population and needs of the recipients.[57] Minnesota's leading proponent of tax-base sharing, former Representative Myron Orfield, Jr., acknowledges that "[t]ax-base sharing is a strong public policy . . . [that] is highly controversial and remains so even after [twenty-five] years in Minnesota."[58]

In New Jersey, a tax-base sharing approach was enacted by the legislature for the Hackensack-Meadowlands area.[59] Also, a bill was introduced in the California legislature to authorize tax-base sharing in the Sacramento area.[60] A number of states have authorized intergovernmental revenue sharing agreements that offer municipalities a voluntary, flexible option to devise creative revenue-sharing arrangements, which could work to address the challenges in the siting of big box development.[61] The Wisconsin Task Force on State and Local Government recently made tax-base sharing its number one priority, noting that such a program would encourage communities to talk about "what is good for us rather than me."[62]

In California, the City of Modesto and Stanislaus County entered into an agreement to share one percent of the sales tax for the purpose of reducing the "fiscalization of land use" that presents itself when cities and counties compete for big box retail development.[63] This authority was

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55. *Id*.

56. Saxer, *supra* note 48, at 676 (citation omitted).

57. *Id*.

58. Myron Orfield, Jr., *Tax-Base Sharing to Reduce Fiscal Disparities*, MODERNIZING STATE PLANNING STATUTES: THE GROWING SMART WORKING PAPERS 167, 170 (American Planning Association 1996).

59. N.J. STAT. ANN. §§ 13:17-60-13:17-76 (West 2003). Enacted in 1968, fourteen communities participate in the inter-municipal revenue sharing program. *See* MECK, *supra* note 46, at 14-8.

60. A.B. 680, 2001 Gen. Assem., Reg. Sess. (Cal. 2002) would have established a tax-base sharing system for eighteen municipalities in seven counties in the Sacramento area. However, "the bill sparked heated opposition from critics who argue that it's an effort to steer funds away from wealthy suburbs and redistribute them to less-affluent areas." California Center for Regional Leadership, *Starting to Think Outside the Big Box*, Apr. 29, 2002 (reprinted from Evan Halper, *Starting to Think Outside the Box*, L.A. TIMES, Apr. 29, 2002), *available at* www.calregions.org/news/item.php?id=24.

61. *See* MECK, *supra* note 46, at 14-10-14-12 (for a review of the state authorizing statutes).

62. State of Wisconsin, Task Force on State and Local Government, *Final Report* (Jan. 2003), *available at* www.wiscities.org/sheehyfinal.htm.

63. Association of Bay Area Governments, *City & County Encourage Good Land Use Through Tax Sharing* (1998), *available at* www.abag.ca.gov/planning/theoryia/cmprmodesto.htm.

granted through Proposition 11 in California that enables cities and counties to enter into sales tax sharing agreements with a super-majority vote of the legislative bodies of both municipalities. Among the successes resulting from this arrangement was a recent land use decision that favored a business park development over a big box retail proposal.[64]

3. Regional or County Level Review

Due to the regional effects that such development carries with it, "[c]ritics of big box developments argue that . . . large-scale retail projects should be subject to review by regional planning boards.[65] There are a growing number of regional attempts to control big box development. For example, in Pennsylvania, four villages and two townships entered into a regional plan that "steers new residential and retail development into the villages and preserves outlying areas for farms and open space."[66] Any new zoning change requires the unanimous approval of a twelve-member regional planning commission comprised of two representatives from each regulated town or village.[67] Through this approach, local leaders are attempting to steer big box development into vacant department stores to avoid urban sprawl.[68]

Acting pursuant to Oregon State policy, the City of Hood River executed an Urban Growth Management Agreement with the County of Hood River, requiring the county to adopt regulations similar to those of the city.[69] The city's big box ordinance includes tree-planting requirements intended to break the "sea of asphalt" look in parking lots, and a ban on stores with footprints over 50,000 square-feet. As is true elsewhere in Oregon, city policy prohibits sewer line extensions outside designated urban growth boundaries unless a health hazard exists.[70]

The American Independent Business Alliance has adopted as part of their legislative platform a position on regional cooperation that encompasses much of the prior discussion. The alliance proposes to: "Provide incentives to encourage neighboring communities to collaborate on land use planning; to develop a joint process for reviewing developments

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64. *Id*.
65. *See* Wack, *supra* note 34.
66. The Hometown Advantage, *Big Box Proposal Tests Regional Planning in Pennsylvania* (Apr. 1, 2003), *available at* http://www.newrules.org/retail/news_archive.php?browseby=slug&slugid=169.
67. *Id*.
68. *Id*.
69. Beaumont & Tucker, *supra* note 45, at 6.
70. *Id*.

of regional impact, including large-scale retail projects; and to implement tax-base sharing."[71]

B. Role for States in Promoting Regionalism Approaches to Aid in Big Box Development Decision-making

Regional planning may be voluntary and "bottom-up:" it may begin with the local political will of each participating municipality, or it may include mandated reviews and coordination emanating from state governments.[72] State approaches to regionalism may be contained in growth management or smart growth policies, and may address a wide array of approaches for accomplishing intergovernmental cooperation to advance regional land use decision-making, including but not limited to: the articulation of statewide plans and goals that include a consistency requirement for regional and local plans; designation of growth and conservation areas; and special development and area concerns.[73] In addition, states may create special regional planning commissions with jurisdiction over a specific significant natural resource area—such as the Adirondack Park Agency in New York—which possesses certain regulatory responsibilities with respect to land use and environmental matters. These matters can effectively control the prospects of big box development within their territory.[74]

As evidenced by recent state-level studies of big box development, there is an interest by some state governments in providing research, training, and technical assistance to help foster better planning and better regional economic impacts of big box retail.[75] Within New England, both the states of Rhode Island[76] and Vermont[77] require by statute a certification process that local plans are consistent with regional and state plans.

71. American Independent Business Alliance, *Legislative Platform to Strengthen America's Independent Businesses* (2005), *available at* www.amiba.net/platform.html.

72. *See* Nancy E. Stroud, *State Review and Certification of Local Plans*, MODERNIZING STATE PLANNING STATUTES: THE GROWING SMART WORKING PAPERS 85, 85 (American Planning Association 1996) (for a survey of state review and certification of local plans).

73. Douglas R. Porter, *State Growth Management: The Intergovernmental Experiment*, 13 PACE L. REV. 481 (1993).

74. N.Y. EXEC. LAW § 801 (McKinney 1996).

75. Peter G. Pan, Legislative Reference Bureau, *"Big Box" Retailing* (2003), *available at* http://www.hawaii.gov/lrb/; *see generally* Perry, *supra* note 36, at 8; New Jersey Office of State Planning, *Big Box Retail*, at 8 (Dec. 1995), *available at* www.nj.gov/dca/osg/docs/bigboxretail120195.pdf. All of the above listed have published big box reports.

76. R.I. GEN LAWS § 45-22.2-9 (1999) (requiring consistency with the State Guide Plan and the Comprehensive Planning and Land Use Regulation Act).

77. VT. STAT. ANN. tit. 24, § 4350 (2004) (requiring that at the request of towns, regional planning commissions approve local plans for consistency with state and regional goals and plans).

Similarly, in Maine, where local governments accept planning grants from the state, there is a state level certification requirement.[78]

In November 2004, a bill was introduced in the New Jersey legislature that would require, among other things, regional cooperation when dealing with proposed big box development.[79] The proposal requires that cities and towns commission a regional economic impact study prior to the siting of a big box, and that municipalities must notify neighboring towns of a proposed big box development, allowing these neighboring jurisdictions to issue a "resolution of intermunicipal concerns" that would be addressed by a board composed of representatives from each of the surrounding towns.[80] A second legislative proposal in New Jersey addressing big box development "would require a revenue sharing agreement between . . . two taxing authorities."[81]

A recent report examining the economic impact of Wal-Mart construction by the Policy Research Institute at the University of Kansas observes that:

> One important implication is the need to form regional-level planning committees that assess the strengths and weaknesses of each community in the region and develop plans that are mutually beneficial. State policy makers should take into consideration how they can encourage such community cooperation. The smaller markets could encourage businesses they need the most and create niches for customers in the trade region. This mutual exchange of customers would be market collaboration, not competition, and would keep customers from all the communities in the region.[82]

Perhaps these recent activities suggest that states might be receptive to considering anew provisions to address developments of regional impact (DRIs), initially introduced as a model regulation in the ALI's 1976 A

78. ME. REV. STAT. ANN. tit. 30-A, § 4347 (West 1996).

79. A.B. 3504, 2004 Leg., 211th Sess. (N.J. 2004); S.B 2080, 2004 Leg., 211th. Sess. (N.J. 2004). Hearings were held on the proposal in November and additional hearings are expected in early 2005. *Id*.

80. Big box is defined in the bill as retail stores over 130,000 square-feet that sell at least 25,000 items with a minimum of ten percent of store revenue in nontaxable groceries. *Id*. A project may then only be sited where the host municipality determines that such action would not cause "substantial detriment to the general welfare of the adjoining municipality based on the specific areas of intermunicipal concern raised" and that it would not impair the "intent and purpose of the master plan or zoning ordinance of the adjoining municipality." *Id*.

81. Laurie Whalen, *Bill Would Slow Down Superstores*, THE TIMES, Feb. 24, 2005, *available at* www.nj.com/news/times/index.ssf?/base/news-2/1109239707152731.xml.

82. Manjula Boyina, *An Examination of Pull Factor Change in Non-Metro Counties in Kansas*: *A Study of the Economic Impact of Wal-Mart Construction*, KAN POL'Y R. at 15 (Fall 2004), *available at* www.ku.edu/pri/publicat/kpr/kprV26N2/kprV26N2A2.shtml.

Model Land Development Code.[83] DRI approaches offer "an effective tool for managing large-scale developments that have impacts outside local borders [by permitting state and regional governments] to interject the public's interest into development matters that may be of benefit to the host community but have spillover effects that outweigh those benefits."[84]

III. REGIONAL STRATEGIES TO BIG BOX DEVELOPMENT IN ACTION – CASE STUDIES

Many state and local governments have advocated regional strategies to counter the negative impacts of big box development. In California, legislators concluded that subsidies for big box retailers resulted in the loss of public funds for public purposes, and in response, passed a law in 1999 that would discourage retailers from creating competition between local governments.[85] The law prohibits redevelopment agencies, cities, or counties from providing financial assistance to a big box store larger than 75,000 square-feet relocating from one community to another in the same market area unless it "enters into an agreement with the affected community to apportion sales tax revenues."[86] Several states have also enabled regional commissions or districts to evaluate the impact of regional-scale developments.[87] This notion of regional impact review provides a forum to weigh the region-wide costs and benefits of large-scale retail development, and typically requires approval from both the host municipality and the regional planning agency.[88]

A. Cape Cod Commission

In Massachusetts, a state with a strong home rule regime, local governments traditionally exercise power to levy property taxes and manage local services, leaving officials on the county level "largely irrelevant."[89] In 1990, Massachusetts passed the Cape Cod Commission

83. Marya Morris, *Approaches to Regulating Developments of Regional Impact*, MODERNIZING STATE PLANNING STATUTES: THE GROWING SMART WORKING PAPERS 111, 111 (American Planning Association 1996).

84. *Id*. at 122.

85. AB 178 was passed by the legislature in 1999, and remained in effect until January 1, 2005. CAL. GOV'T CODE § 53084 (West 2004); Curran, *supra* note 21, § 4.6.

86. *Id*.

87. *Id*.

88. *See* The Hometown Advantage, *Regional Impact Review* (2005), *available at* www.newrules.org/retail/regionalimpact.html.

89. New Ecology, *Key Arguments*, at 1 (Feb. 2002), *available at* http://www.newecology.org/docs/KeyArgumentsofRobertSmith.PDF (The paper discusses the work, *Regional Land Use Planning and*

act. Motivated by the desire to prevent unwanted big box developments, and to increase open space throughout Barnstable County, the state created a regional planning agency, the Cape Cod Commission, to work with the region's fifteen towns.[90]

The commission's responsibilities include the preparation of a regional land use plan and the regulation of proposed development that has regional impacts.[91] The commission is tasked with weighing the benefits of the proposed development projects against the expected regional impacts before deciding whether to accept the proposed projects or to reject them.[92] Where the commission decides to reject a development project, no town may subsequently approve it. However, if the commission decides to approve a project in a specific town, the local government maintains the power to reject the proposal.[93] In accordance with the regional land use plan adopted by the commission and large scale review process, permits have been denied to several big box retailers from developing on Cape Cod, including Wal-Mart, Sam's Club, Costco, and Home Depot.[94]

B. Mandated Regional Review

1. Vermont's Act 250

Vermont's Act 250 and Act 200 are cited as a successful growth management framework requiring state review and permitting of projects of regional significance, such as big box retail outlets.[95] The state strategy allows local government to consider regional impacts when deciding

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Regulation on Cape Cod: Reconciling Local and Regional Control, written by Robert W. Smith, Department of City and Regional Planning, University of California, Berkeley).

90. *Id*. *See also* Donald L. Connors & Anne Rickard Jackowitz, *A New Regional Commission for Cape Cod*, STATE AND REGIONAL INITIATIVES FOR MANAGING DEVELOPMENT: POLICY ISSUES AND PRACTICAL CONCERNS Ch.6 (Douglas Porter, ed.) (The Urban Land Institute 1992); *see* Commonwealth of Massachusetts, *An Act Establishing the Cape Cod Commission* (1989), http://www.capecodcommission.org/act.htm.

91. *See* Cape Cod Commission Act § 1(b), *available at* http://www.capecodcommission.org/act.htm.

92. *Id*. § 1(d).

93. *Id*.

94. CURRAN, *supra* note 21, at § 4.6.

95. New Jersey Office of State Planning, *Big Box Retail*, at 10 (Dec. 1995), *available at* www.nj.gov/dca/osg/docs/bigboxretail120195.pdf. *See also* Thomas R. Melloni & Robert I. Goetz, *Planning in Vermont*, STATE & REGIONAL COMPREHENSIVE PLANNING: IMPLEMENTING NEW METHODS FOR GROWTH MANAGEMENT 158, 158-59 (Peter A. Buschsbaum & Larry J. Smith, eds.) (American Bar Association 1993); Jeffrey Squires, *Growth Management Redux: Vermont's Act 250 and Act 200*, STATE AND REGIONAL INITIATIVES FOR MANAGING DEVELOPMENT: POLICY ISSUES AND PRACTICAL CONCERNS Ch.2 (Douglas Porter, ed.) (The Urban Land Institute 1992).

whether or not to allow permits to big box retailers by setting forth an integrated system of state, regional, and local planning, including direct state-level review of large building projects.[96] Two key features of the legislation are the ability of local governments to designate "growth areas" where new growth will be concentrated in a mixed-use land use pattern, and project review by the district commissions based on statutory criteria, which can be appealed to the Environmental Court.[97]

In 1993, Wal-Mart applied for an Act 250 permit to construct a new 120,000-150,000 square-foot store on agricultural land located outside of the Town of St. Albans.[98] After the district commission issued a permit for the store, the decision was appealed because—among other things—the project did not meet the Act 250 criteria for "impact of growth."[99] The Vermont Environmental Board reversed the commissioner's determination and denied the permit.[100] On appeal, the Vermont Supreme Court upheld the Environmental Board's "broad analysis of the potential impacts of the big box store under the Vermont regime," including loss of business in commercial districts.[101] The court endorsed the Environmental Board's analysis incorporating secondary regional impacts such as "the growth that would be induced by the big box store, recognizing that these stores attract secondary development that increases servicing costs for local governments and shifts retail activity outside of established commercial areas."[102]

2. New Jersey

The New Jersey State Development and Redevelopment Plan offers a number of plan policies to better regulate the siting of big box retail.[103] For example, in the area of economic development, the plan calls for a coordination of economic activities both horizontally and vertically among different governments, as well as the provision of adequate capital facilities to meet the economic objectives of the plan, whether the facilities are publicly or privately owned.[104] With respect to comprehensive planning, the state plan requires a coordinated review of any plans, ordinances,

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96. VT. STAT. ANN. tit. 10, § 6086 (1997).
97. CURRAN, *supra* note 21, at § 4.6.
98. *Id*. *See also*, *In re* WalMart Stores, Inc., 702 A.2d 397, 400 (Vt. 1997).
99. *Id*.
100. *Id*.
101. *Id*.
102. CURRAN, *supra* note 21, at § 4.6.
103. *See* New Jersey Department of Community Affairs, *New Jersey State Development and Redevelopment Plan* (2004), *available at* http://www.state.nj.us/dca/osg/plan/index.shtml.
104. *Id*.

programs, and projects that have a "greater-than-local" impact.[105] The goals of this process are to: minimize regional and local impacts; encourage active participation in multi-jurisdictional planning programs to help achieve fiscal efficiencies in the delivery of public services and compatibility with plans of adjacent communities; and to integrate and coordinate plans at all levels of government.[106]

IV. CONCLUSION

Although local governments possess a variety of planning and zoning tools to manage the location and appearance of big box developments, residents and taxpayers in a region are ill-served when individual municipalities consider applications for new big box retail without conducting critical regional impact assessments. These assessments include economic and planning studies because the regional residents will suffer unintended consequences of inadequate public infrastructure, causing economic impacts that could result in job losses and diminution of the tax base, as well as significant environmental harms. Big box development is meant to draw consumers from a wide region to support its super-size. So too, it must attract a region-wide effort to ensure that the resulting impacts are right-sized to ensure the best possible quality of life and sense of place for the region.

While there are many optional techniques that municipalities may use to accomplish these ends (with variations from state to state), state governments have an opportunity to proactively adopt policies and implement new planning programs. These programs should provide technical assistance, and provide effective regulatory frameworks and funding to ensure that area-wide impacts are equitably addressed in the local and regional decision-making process for the siting of big box development.

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105. *Id.*

106. *Id.* In fact, the Maryland State Office of Planning issued this as a recommendation for state government to help address some of the planning strategies for big box retail. See Perry, *supra* note 36, at 63 ("The State can amend Smart Growth legislation and language in Article 66B to provide for increased coordination of the review of plans, ordinances, programs and projects that potentially have a 'greater-than-local' impact.").